

M e m o r a n d u m**245.1520**

To: Out-of-State District (LK)

Date: January 23, 1987

From: Charles J. Graziano

This is in reply to your request of November 28, 1983 in which you ask whether "Mil-Kee-Whey," a whey based food beverage drink qualifies as a nontaxable food product.

The label from this product indicates that Mil-Kee-Whey is principally composed of dairy whey, nonfat dry milk, milk protein, and corn syrup. The product is not described on its label as a food supplement or the equivalent, nor does the label make any medicinal or weight loss claims. Therefore, in our opinion, this product is a beverage composed at least in part of milk or a milk product and as such qualifies as a tax exempt food product under subsection (a)(1) of Sales and Use Tax Regulation 1602.

CJG:ba

A "medicinal claim" on the product label is no longer used as a basis for differentiating a food product from a medicine. Please see Annotation 245.0724 (11/17/08). RDT. 7/2/09.
